

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO. 04-11573-RWZ

ANTHONY P. SCAPICCHIO, M.D.,	)
Plaintiff,	)
	)
v.	)
	)
MOUNT AUBURN PROFESSIONAL	)
SERVICES, a Massachusetts non-	)
profit corporation, MOUNT AUBURN	)
HOSPITAL, a hospital incorporated	)
in Massachusetts, for itself and as	)
administrator of the Mount Auburn	)
Hospital RetirementPlus 403(b)	)
Plan, and THOMAS FABIANO,	)
Defendants.	)
	)

**MOTION FOR SUMMARY JUDGMENT FILED BY**  
**PLAINTIFF ANTHONY P. SCAPICCHIO, M.D.**

Now comes the Plaintiff, Anthony P. Scapicchio, M.D., and, in accordance with Rule 56 of the Federal Rules of Civil Procedure and Local Rule 56.1, submits this motion for summary judgment in his favor on the claims he has brought against each of the Defendants pursuant to the Employment Retirement Security Act of 1974 ("ERISA") and the Americans with Disabilities Act of 1990 ("ADA"). As set forth in more detail in the accompanying memorandum of law and statement of undisputed material facts, each of which has been filed herewith in support of this motion, Dr. Scapicchio is entitled to summary judgment because the Defendants' decision to terminate his retirement benefits when he became disabled constitutes discriminatory and illegal conduct in violation of both ERISA and ADA.

Wherefore, Plaintiff Anthony P. Scapicchio, M.D., respectfully moves this Honorable Court to enter summary judgment, in his favor and against all three defendants, on Dr. Scapicchio's claims against the Defendants pursuant to the Employee Retirement Income Security Act of 1974 and the Americans with Disabilities Act of 1990.

Respectfully submitted,  
**ANTHONY P. SCAPICCHIO, M.D.**  
By his attorney,

/s/ John S. Day

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John S. Day (BBO #639249)  
167 Washington Street  
Norwell, MA 02061  
781-878-6541 (telephone)  
781-846-0780 (facsimile)  
jday@attorneyday.com (electronic mail)

Date: January 21, 2005

**CERTIFICATE OF SERVICE**

I, John S. Day, hereby certify that on the 21<sup>st</sup> day of January, 2005, I caused a copy of the foregoing to be served, by electronic filing, upon Philip M. Cronin, Peabody & Arnold, 30 Rowes Wharf, 6<sup>th</sup> Floor, Boston, Massachusetts 02110.

/s/ John S. Day

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John S. Day